THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.4810 of 2006

Date of Decision: 14 - 9 - 2006

Samadhan Jogian Dudhadari **.....Petitioner**
of Village Kaller Bhaini

v.

Balkar Singh **....Respondent**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Akshay Bhan, Advocate
for the petitioner.

Mr.A.S.Syan, Advocate
for the caveator-respondent.

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P.S.PATWALIA, J. (Oral)

The present revision petition has been filed against orders dated 15.1.2005 passed by the learned Civil Judge (Jr. Division), Patiala and 22.8.2006 passed by the learned Additional District Judge, Patiala whereby an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure filed by the plaintiff, respondent in this revision petition, was allowed and a first appeal filed by the petitioner, defendant in the suit, against the said order was dismissed.

It is the case of the plaintiff in the suit that he is in possession of the suit land as a tenant and is regularly paying batai and price of the produce to the defendant. He has further stated that he has been a tenant under the defendant for the last so many years and previously his father was a tenant in the suit land. After

the death of his father, the plaintiff is cultivating the suit land. He submits that the defendant is a Dera Samadhan Jogian and the followers of the Dera tried to forcibly dispossess the plaintiff on the night of 13.2.2004, as a result of which the plaintiff had to lodge an FIR in Police Station Sadar, Patiala against those persons. It is under these circumstances that the plaintiff filed the suit praying for a permanent injunction restraining the defendant from dispossessing him from the suit land.

On the other hand, the defendant has denied the fact that the plaintiff is in possession of the land as owner. Rather it is contended that physical possession of the suit land was with the defendant. The defendants further stated that a false FIR was lodged against some of the villagers who are the devotees of the Dera and according to the defendant the said FIR was cancelled after conducting a full inquiry.

The application for interim injunction was examined by the trial Court. In support of his case the plaintiff produced a number of documents including jamabandi of the disputed land for the year 1997-98 showing him as tenant of the defendant. The other documents produced by him and examined by the trial Court are as hereunder:-

> "The learned counsel for the plaintiff has placed on record, copy of FIR No.108 dated 13.2.2004 of P.S.Saddar, Patiala, copy of jamabandi for the year 1997-98, copy of complaint of Balkar Singh to Punjab Human Rights Commission Chandigarh dated 20.2.2004. Copy of application moved to Deputy Commissioner, Patiala and order of D.C. Dated 26.7.2004, copy of Contempt Petition Dated 15.7.2004. Copy of receipts of Batai/Chakota, Two copies of receipts dated 17.2.90 and 14.1.91 copy of receipt/bill regarding payment of electricity of Tubewell connection No.336/13, and copy of the order dated 29.7.2004 staying the order of Tehsildar regarding

change of Khasra – girdawari and order passed by the S.D.M. Patiala. ..."

Relying on various documents produced, the trial Court granted a temporary injunction to the plaintiff on the following reasons:-

"After perusing the documents placed by the learned counsel for the plaintiff it shows that Plaintiff Balkar Singh son of Gurdial Singh was tenant at "WILL" which has been mentioned in column no.5 of the Jamabandi of the disputed land for the year 1997-98 which shows that plaintiff/applicant is tenant of the defendant. The learned counsel for the plaintiff/applicant argued that on 13.2.2004, defendant alongwith villagers and Halqua Patwari Jajgmal Singh came to the land in possession of the plaintiff/applicant and damaged the standing crops through tractor without any right and wanted to dispossess the plaintiff/applicant from the suit land. The learned counsel for the plaintiff/applicant has also placed order dated 29.11.2004 regarding change of Khasra Girdwari which is passed by the S.D.M. Patiala and the order is stayed till further. The defendants have not produced on record any document on the basis of which said entry has been made. They have also not produced any notice which must have been served on the plaintiff before ordering the correction of the revenue official. It was incumbent upon Halqua Patwari to give notice to the person earlier recorded in possession of the suit land in the revenue record to maintain record thereof. As discussed above, the plaintiffs are in possession of the disputed land according to the revenue record placed on the file. ..."

This injunction was confirmed by the lower Appellate Court with the following observations:-

"The plaintiff has produced on record jamabandi for the year

1997-98 and as per column No.5 of that jamabandi, the plaintiff is shown as tenant of the defendant. The plaintiff has also placed on record copies of receipts dated 17.2.1990 and 14.11.1994, copy of receipt/bill regarding payment of electricity charges of tubewell connection No.336/13 and the copy of order dated 29.7.2004 of the SDM Patiala staying the order of the Tehsildar regarding change of khasra girdwari. Thus, as per jamabandi for the year 1997-98 the plaintiff is in possession of the suit land being tenant. The trial Court has rightly held that it has not been disclosed by the defendant that on which basis the entries of khasra girdawari have been changed. The presumption of truth is attached to the jamabandi, the plaintiffs are shown to be in possession over the disputed land, then the trial court has rightly held that a prima facie case is made out in favour of plaintiff. ..."

Learned counsel for the petitioner at the time of arguments contended that in fact the Courts below have granted injunction only on the basis of one jamabandi for the year 1997-98. He further states that plaintiff is a trespasser while the defendant is the true owner and therefore an injunction in favour of a trespasser could not be granted as against the true owner. It is the further contention of the petitioner that actually he is in possession of the land.

As against this, learned counsel for the respondent-plaintiff submits that not only in the jamabandi for the year 1997-98 but in all the Khasra Girdawaris upto the year 2003 he has been shown to be in possession of the suit land. It is only after the year 2003 that the petitioner-defendant got the Khasra Girdawaris changed. According to the respondent-plaintiff this was done by the petitioner-defendant in connivance with the officials of the revenue department. He stated that he has already filed an appeal before the revenue authorities against the change in the Khasra Girdawaris which is pending and an interim order has

been granted in favour of the respondent-plaintiff.

Having examined the contentions and going through the orders made by the Courts, I do not find any reason to interfere in the findings recorded by the Courts below. Relying on the documents produced by the plaintiff, a finding has been recorded that the plaintiff is in possession of the suit land.

In view of the aforementioned findings, I find no reason to disagree with the view taken by the Courts below. The argument of the learned counsel that even if it is assumed that the plaintiff is at best a trespasser no injunction could be granted against a true owner also carries no weight as prima facie the plaintiff has been found to be a tenant.

For the reasons aforementioned, I find no merit in this revision petition and the same is accordingly dismissed. It is, however, clarified that any observation made in this order is only for the purpose of deciding the claim for interim relief and would have no bearing on the controversy in the main suit which would be decided on the basis of the evidence produced by the parties.

(P.S.PATWALIA)
JUDGE

September 14, 2006.

RC